

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DOUGLAS BENSON,

Plaintiff,

v.

KITTITAS COUNTY,
COMMISSIONER BRETT
WACHSMITH, COMMISSIONER
LAURA OSIADACZ,
COMMISSIONER CORY WRIGHT,
PROSECUTOR GREGORY
ZEMPEL, SHERIFF CLAYTON
MYERS, and TREASURER AMY
CZISKE,

Defendants.

NO. 1:23-CV-3149-TOR

ORDER DENYING MOTION TO
SET ASIDE JUDGMENT

BEFORE THE COURT is Plaintiff's Motion to Set Aside Judgment. ECF No. 27. This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, the motion is **DENIED**.

1 The underlying facts are set forth in the Court's Order of Dismissal. ECF
2 No. 24. Plaintiff Douglas Benson contends the Court did not read his filings and
3 therefore the matter should not have been dismissed.

4 A motion for reconsideration of a judgment may be reviewed under either
5 Federal Rule of Civil Procedure 59(e) (motion to alter or amend a judgment) or
6 Rule 60(b) (relief from judgment). *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255,
7 1262 (9th Cir. 1993). "Reconsideration is appropriate if the district court (1) is
8 presented with newly discovered evidence, (2) committed clear error or the initial
9 decision was manifestly unjust, or (3) if there is an intervening change in
10 controlling law." *Id.* at 1263; *United Nat. Ins. Co. v. Spectrum Worldwide, Inc.*,
11 555 F.3d 772, 780 (9th Cir. 2009) (citation omitted). Whether to grant a motion
12 for reconsideration is within the sound discretion of the court. *Navajo Nation v.*
13 *Confederated Tribes and Bands of the Yakima Nation*, 331 F.3d 1041, 1046 (9th
14 Cir. 2003).

15 A district court does not abuse its discretion when it disregards legal
16 arguments made for the first time on a motion to alter or amend a judgment.
17 *United Nat. Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir.
18 2009) (quotation marks and citations omitted); *Carroll v. Nakatani*, 342 F.3d 934,
19 945 (9th Cir. 2003) ("A Rule 59(e) motion may not be used to raise arguments or
20 present evidence for the first time when they could reasonably have been raised

1 earlier in the litigation.”). Evidence available to a party before it files its
2 opposition is not “newly discovered evidence” warranting reconsideration of
3 summary judgment. See *Frederick S. Wyle Prof'l Corp. v. Texaco, Inc.*, 764 F.2d
4 604, 609 (9th Cir. 1985).

5 As a rule, a court should be loath to revisit its own decisions in the absence
6 of extraordinary circumstances such as where the initial decision was “clearly
7 erroneous and would work a manifest injustice.” *Christianson v. Colt Indus.*
8 *Operating Corp.*, 486 U.S. 800, 817 (1988).

9 Here, Plaintiff contends the Court granted the motion to dismiss without
10 reading Plaintiff’s responses. Plaintiff is wrong. The Court reviewed the entire
11 file and ruled according to the law. The Court’s ruling of dismissal stands
12 according to the reasoning given at ECF No. 24.

13 **ACCORDINGLY, IT IS HEREBY ORDERED:**

14 Plaintiff’s Motion to Set Aside Judgment, ECF No. 27, is **DENIED**.

15 The District Court Executive is directed to enter this Order, furnish copies to
16 the parties, and the file remains **CLOSED**.

17 DATED January 12, 2024.



Thomas O. Rice
THOMAS O. RICE
United States District Judge